

ARTICLE XXVII. – ZONING BOARD OF ADJUSTMENT

Sec. 1. - Appointment.

A board of adjustment is hereby established. Such board shall be appointed as provided by state law, and shall have all powers granted therein.

(Ord. No. 135-182, 7-16-07)

Section 11-52-80, Code of Alabama (1975), as amended

Board of adjustment - Creation; composition; qualifications, appointment, terms of office and removal of members; vacancies; adoption of rules of procedure; meetings; record of proceedings; procedure for appeals to board from decisions of administrative officials; powers of board as to appeals.

(a) In availing itself of the powers conferred by this article, the legislative body of any incorporated city or town may provide for the appointment of a board of adjustment and, in the regulations and restrictions adopted pursuant to the authority of this article, may provide that the said board of adjustment shall in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purposes and interests and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of three years, except that in the first instance one member shall be appointed for a term of three years, two for a term of two years, and two for a term of one year, and thereafter each member appointed shall serve for a term of three years or until his successor is duly appointed; provided, that in all cities having a population of not less than 175,000 nor more than 275,000 according to the most recent federal decennial census, all members of the board, including any alternate member provided for in this subsection, shall be bona fide residents and qualified electors of such cities; provided further, that the members of boards of adjustment created shall serve out their terms, and thereafter the members of such boards shall be appointed in the manner prescribed in this subsection for boards created after August 26, 1971. In addition to the five regular members provided for in this subsection two supernumerary members shall be appointed to serve on such board at the call of the chairman only in the absence of regular members and while so serving shall have and exercise the power and authority of regular members. Such supernumerary members shall be appointed to serve for three-year terms and shall be eligible for reappointment. Appointed members may be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(b) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine; provided that, in cities having populations of not less than 175,000 nor more than 275,000, the board shall meet regularly once a month on a day determined by the board. Such chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

(c) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall transmit forthwith to the board all papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(d) The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto;

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance; and

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(e) In exercising the powers mentioned in subsection (d) of this section, such board may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and, to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

(f) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called on by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(Acts 1935, No. 533, p. 1121; Code 1940, T. 37, §781; Acts 1963, No. 563, p. 1185; Acts 1965, No. 588, p. 1100; Acts 1971, No. 431, p. 1163.)